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§ 1.401(l)-1 Permitted disparity in employer-provided contributions or benefits.

(a) *Permitted disparity*—(1) *In general.* Section 401(a)(4) provides that a plan is a qualified plan only if the amount of contributions or benefits provided under the plan does not discriminate in favor of highly compensated employees. See § 1.401(a)(4)-1(b)(2). Section 401(a)(5)(C) provides that a plan does not discriminate in favor of highly compensated employees merely because of disparities in employer-provided contributions or benefits provided to, or on behalf of, employees under the plan that are permitted under section 401(l). Thus, if a plan satisfies section 401(l), permitted disparities in employer-provided contribu-

tions or benefits under a plan are disregarded, by reason of section 401(a)(5)(C), in determining whether the plan satisfies any of the safe harbors under §§ 1.401(a)(4)-2(b)(2) and 1.401(a)(4)-3(b). However, even if disparities in employer-provided contributions or benefits under a plan are permitted under section 401(l) and thus do not cause the plan to fail to satisfy § 1.401(a)(4)-1(b)(2), the plan may still fail to satisfy section 401(a)(4) for other reasons. Similarly, even if disparities in employer-provided contributions or benefits under a plan are not permitted under section 401(l) and thus may not be disregarded under section 401(a)(4) by reason of section 401(l), the plan may still be found to be nondiscriminatory under the tests of section 401(a)(4), including the rules for imputing permitted disparity under § 1.401(a)(4)-7.

(2) *Overview.* Rules relating to disparities in employer-provided contributions under a defined contribution plan are provided in § 1.401(l)-2. For rules relating to disparities in employer-provided benefits under a defined benefit plan, see § 401(l)-3. For rules relating to the application of section 401(l) to a plan maintained by a railroad employer, see § 1.401(l)-4. For rules relating to the overall permitted disparity limits, see § 1.401(l)-5. For rules relating to the effective date of section 401(l), see § 1.401(l)-6.

(3) *Exclusive rules.* The rules provided in §§ 1.401(l)-1 through 1.401(l)-6 are the exclusive means for a plan to satisfy sections 401(l) and 401(a)(5)(C). Accordingly, a plan that provides disparities in employer-provided contributions or benefits that are not permitted under §§ 1.401(l)-1 through 1.401(l)-6 does not satisfy section 401(l) or 401(a)(5)(C).

(4) *Exceptions.* Sections 401(a)(5)(C) and 401(l) are not available in the following arrangements—

(i) A plan maintained by an employer, determined for purposes of the Federal Insurance Contributions Act or the Railroad Retirement Tax Act, as applicable, that does not pay any wages within the meaning of section 3121(a) or compensation within the meaning of section 3231(e). For this purpose, a plan maintained for a self-